



**AMENDMENT NUMBER THREE
CONTRACT MA-280-20010615
FOR
COGENERATION/CENTRAL UTILITY PLANT OPERATION,
MAINTENANCE & ENVIRONMENTAL COMPLIANCE SERVICES**

This Amendment is made between the County of Orange, a political subdivision of the State of California through its department John Wayne Airport (“County” or “JWA”), and Sterling Energy International, Inc. (the “Contractor”), which are sometimes individually referred to as a “Party” or collectively referred to as the “Parties.”

Recitals

Whereas, Contractor responded to a Request for Proposal for providing goods and services for County; and

Whereas, the Parties entered into Contract MA-280-20010615 for Cogeneration/Central Utility Plant Operation, Maintenance & Environmental Compliance Services, effective January 1, 2020 through December 31, 2022, in the amount not to exceed \$11,799,206.99 (the “Contract”); and

Whereas, pursuant to Amendment Number One, the Parties increased the ~~prevailing wage~~ rates and replaced Attachment B Contractor’s Pricing; and

Whereas, pursuant to Amendment Number Two, the Parties increased the ~~prevailing wage~~ rates and replaced Attachment B Contractor’s Pricing, Section 3; and

Whereas, the Parties now desire to renew the Contract for two years, effective January 1, 2023 through December 31, 2024, ~~increasing the total contract amount by with a new Contract amount not to exceed \$8,611,667.13567,438,37~~ for a total Not To Exceed amount of ~~\$8,611,667.13567,438,37~~ \$20,410,874.12 and replace Attachment B Contractor’s Pricing; and amend various sections of the Additional Terms and Conditions to conform with County standard language; and

Now Therefore, in consideration of the mutual obligations set forth herein, the Parties agree as follows:

Articles

1. Section 2 of the Additional Terms and Conditions shall be amended to read in its entirety as follows:

2. Term of Contract

This Contract shall be effective January 1, 2023, through and including December 31, 2024, upon execution of all necessary signatures unless otherwise terminated by County.

2. Section 3 of the Additional Terms and Conditions shall be deleted and amended to read in its entirety as follows:

3. Reserved

3. Section 4 of the Additional Terms and Conditions shall be amended to read in its entirety as follows:

4. Contract Amount Not to Exceed

Contract Amount not to exceed ~~\$8,611,667.13567,438,37~~ \$8,611,667.13567,438,37.

4. Section 13 of the Additional Terms and Conditions shall be deleted and amended to read in its entirety as follows:

13. Reserved

5. Section 75 of the Contract's Additional Terms and Conditions shall be amended to read in its entirety as follows:

75. Notices

Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by USPS certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Orange County Public Works/JWA
Maintenance
Attention: Kevin France
3180 Airway Avenue
Costa Mesa, CA 92626
Phone: (949) 252-6070 Mobile (949) 293-6501
Email: Kevin.France@ocpw.ocgov.com

cc: Orange County Public Works/Procurement
Attention: Gene Duenas, DPA
601 N Ross St.
Santa Ana, CA 92701
Phone: 949-252-5125
Email: gene.duenas@ocpw.ocgov.com

Contractor: Sterling Energy International, Inc.
Attn: Michael O'Leary
3001 Red Hill Avenue #6-201
Costa Mesa, CA 92626
Phone 949-248-2917 Mobile 760-727-7711
Email: MOLeary@Sterling-Energy.com

6. The attendance schedule described, including table pages 50-51 of the Attachment A-1 Vendor's Proposal Revised 101119, shall be deleted and amended to read in its entirety as follows:

A minimum of one knowledgeable Contractor member with the necessary skill sets and experience to operate the CUP shall be on site during these hours.

Days	1/1/23 - 12/31/24
Monday - Friday	5AM - 11:30PM
Weekends and Holidays	5AM - 11:30PM

7. Attachment B, Contractor's Pricing shall be deleted and replaced as attached hereto.

Signature page follows

Signature Page

In Witness Whereof, the Parties have executed this Amendment to the Contract on the dates shown opposite their respective signatures below.

Sterling Energy International, Inc.*

Signature	Name	Title	Date
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Signature	Name	Title	Date
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**If Contractor is a corporation, signatures of two specific corporate officers are required as further set forth:*

- *The first signature must be one of the following: a) Chairman of the Board; b) President; or c) any Vice President.*
- *The second signature must be one of the following: a) Secretary; b) Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.*
- *In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

County Authorized Signature:

Signature	Name	Deputy Purchasing Agent Title	Date
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Approved As To Form
Office of the County Counsel
County of Orange, California

Deputy	Date
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Approved by Board of Supervisors on:

Date

Attachment B
Contractor's Pricing

1. Compensation:

This is a time and materials, not-to-exceed Contract between County and Contractor for Cogeneration/Central Utility Plant Operation, Maintenance and Environmental Compliance Services as set forth in Attachment A, "Scope of Work." Labor rates will be paid according to negotiated rates conforming to prevailing wage tables published by the State of California. Subcontracts and materials shall be passed through and paid at Contractor's cost plus any agreed percent mark-up.

Contractor may schedule required maintenance and order parts or services up to \$5,000.00 without written direction from County; however, parts and services totaling over \$5,000.00 must be approved ahead of time in writing by County Project Manager. The cost of the parts and services will be reimbursed to Contractor as part of the monthly invoice. County reserves the right to subcontract and/or buy parts and services directly (without paying a mark-up or pass-through fee to Contractor). Expenses such as major engine overhauls costing over \$50,000.00 may be procured by County in coordination and with the support of the Contractor.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing, labor, insurance and bonds, vehicles, equipment, tools, materials, overhead, and travel required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by an amendment in accordance with Articles C. of the County Contract Terms and Conditions.**

2. Withholdings

County shall retain the right to withhold all payments should any provision of this Contract not be completed in a satisfactory manner or in accordance with this Contract. Only the amount associated with disputed performance shall be withheld pending resolution of the dispute. The remaining undisputed amount shall be paid promptly. If payment is withheld, County Project Manager shall notify Contractor in writing of the reasons and what action is required before payment will be made. Otherwise, County shall make payment within thirty (30) days after receipt and approval of the invoice.

3. Fees and Charges

The price must include all fees, shipping, freight, transportation, travel, taxes and any other fees. No other compensation shall be allowed.

County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

CONTRACT TERM	ESTIMATED YEARLY COST
January 1, 2023 — December 31, 2024 3	\$8,611,667.13 134,258,593.13
January 1, 2024 — December 31, 2024	\$4,308,845.24

Total of the Two Year amount not to exceed:	\$8,567,438.37
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Cogeneration/Central Utility Plant Operation Services

The hourly rates shall be paid for the Contractor’s staff members. Any replacement or addition of staff must be approved in writing by County prior to work being performed. All requirements and expenses related to the performance of work and services set forth in the Scope of Work will be paid on a time-and-materials basis.

Parts, materials, and subcontracted services provided by entities not affiliated with Contractor will be reimbursed by County at the actual cost plus a **4.5%** mark-up.

Title	Time /Category	Rates		
		1/1/23 - 6/30/23	7/1/23 - 6/30/24	7/1/24 - 12/31/24
Project Manager	Regular Time	\$227.05 \$227.05	\$233.86 \$233.86	\$240.88 \$240.88
Procurement and Billing Administrator	Regular Time	\$92.43 \$92.43	\$95.20 \$95.20	\$98.06 \$98.06
Technicians	Regular Time	\$129.55 \$126.87	\$133.44 \$130.68	\$137.44 \$134.60
Other Sterling Energy Managers and Engineers	Regular Time	\$227.05 \$227.05	\$233.86 \$233.86	\$240.88 \$240.88
Site Operations Manager	Regular Time	\$161.72 \$161.72	\$166.57 \$166.57	\$171.57 \$171.57
Site Maintenance Manager	Regular Time	\$161.72 \$161.72	\$166.57 \$166.57	\$171.57 \$171.57
Project Manager	Overtime Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt
Procurement and Billing Administrator	Overtime Hourly Rate	\$109.29 \$109.29	\$112.57 \$112.57	\$115.95 \$115.95
Technicians	Overtime Hourly Rate	\$161.02 \$161.02	\$165.85 \$165.85	\$170.83 \$170.83
Other Sterling Energy Managers and Engineers	Overtime Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt
Site Operations Manager	Overtime Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt
Site Maintenance Manager	Overtime Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt

Project Manager	Double Time Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt
Procurement and Billing Administrator	Double Time Hourly Rate	\$126.15 \$126.15	\$129.93 \$129.93	\$133.83 \$133.83
Technicians	Double Time Hourly Rate	\$192.49 \$192.49	\$198.26 \$198.26	\$204.21 \$204.21
Other Sterling Energy Managers and Engineers	Double Time Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt
Site Operations Manager	Double Time Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt
Site Maintenance Manager	Double Time Hourly Rate	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt	Salaried Exempt Salaried Exempt

4. Final Payment

Final payment shall be issued based on the completion of the work as described in this Contract and County Project Manager accepts the all work and JWA issued badges are returned to Badging Office.

5. Payment Terms – Payment in Arrears

Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

6. Taxpayer ID Number

The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

7. Payment-Invoicing Instructions

The Contractor will provide an invoice on the Contractor’s letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

- a. **Request for Payment:** Contractor shall use the JWA request for Payment procedure as defined by the Airport project management system. The Request for Payment form shall be divided according to the tasks set forth in the Attachment A to the Contract. Responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction. A proper invoice shall include all appropriate documentation and information as may be required elsewhere in this Contract.
- b. **Frequency:** Contractor shall request payment for work performed once per month with required supporting documentation and to the reasonable satisfaction of the County.
- c. **Status Report:** A Scope of Work status report shall be submitted at the same time as submission of each Request for Payment. The status report shall include a written narrative of work performed during the invoicing period.
- d. **Payment:** County shall be responsible for remitting payment within thirty (30) calendar days of the date of receipt of invoice in a format acceptable to County.
- e. **Services:** Billing shall cover services and/or goods not previously invoiced. Subcontracted services shall be included with supporting documentation such as receipts and invoices from the various subcontractors.
- f. **Hourly Rate:** Required elements to invoice for the hourly rate include the following: Timesheets of the staff showing hours worked and
- g. **Classification/Titles:** Contractor's employee's name and classification/title must agree to the title stipulated in Attachment B and Attachment C of the Contract.
- h. **Reimbursable:** Payment for reimbursable items is subject to supporting documentation requirements identified above in items a – g. County will not pay for reimbursable items without required supporting documentation submitted by Contractor. Parts purchased by Contractor will be reimbursed by County with original receipts and written authority for the purchase from County Project Manager attached.
- i. **Disclaimer:** Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

Invoices and support documentation are to be forwarded to **(not both)**:

Mailed to John Wayne Airport
Attention: Accounts Payable
3160 Airway Avenue
Costa Mesa, CA 92626

Or

Emailed to AccountsPayable@ocair.com

8. All other terms and conditions in this Contract shall remain unchanged and with full force and effect.